



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent to Conduct Restoration Planning

AGENCY: Office of Response and Restoration (OR&R), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of intent to conduct restoration planning activities.

SUMMARY: Notice is hereby given of intent to proceed with restoration planning actions to address injuries to natural resources resulting from the discharge of oil from the Kirby Inland Marine LP tank barge 30015T (the “Incident”). The purpose of this restoration planning effort is to evaluate and select restoration actions to compensate the public for the natural resource injuries resulting from the Incident.

FOR FURTHER INFORMATION CONTACT: For further information contact one or more of the following Trustee representatives: Laurie Sullivan (NOAA) at (707) 570-1762, Laurie.Sullivan@noaa.gov; Johanna Gregory Belssner (TPWD) at (512) 389-8703, Johanna.Gregory@tpwd.texas.gov;

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2019, tank barge 30015T, owned by Kirby Inland Marine, LP (“Kirby”), collided with the tanker ship Genesis River near Bayport, Texas. The collision penetrated the hull of Kirby’s barge 30015T, and an estimated 14,278 barrels (about 600,000 gallons) of oil in the form of reformat, a gasoline blending stock, was lost from the barge. Reformat discharged from the Kirby barge flowed into the Houston Ship Channel and Galveston Bay, spreading westward and southward and washing ashore on the western coastline of the bay roughly between Red Bluff and Eagle Point, Texas. The

discharge affected natural resources in the general area. All of the foregoing is referred to as the "Incident."

Pursuant to section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. 2701, et seq., federal and state trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities and (2) develop and implement a plan for restoration of such injured resources. The federal trustees are designated pursuant to the National Contingency Plan, 40 CFR Section 300.600 and Executive Order 12777. State trustees for Texas are designated by the Governor of Texas pursuant to the National Contingency Plan, 40 CFR Section 300.605. The natural resources trustees ("Trustees") under OPA for this Incident are the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"); the Texas General Land Office ("TGLO"); the Texas Commission on Environmental Quality ("TCEQ"); and the Texas Parks and Wildlife Department ("TPWD"). Kirby is the Responsible Party ("RP") for the Incident. The Trustees are coordinating with representatives of the RP on Natural Resource Damage Assessment ("NRDA") activities.

The Trustees began the Preassessment Phase of the NRDA, in accordance with 15 CFR 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) ephemeral data (i.e., environmental data collected in the immediate aftermath of the spill), and (3) other assessment data.

The NRDA Regulations under OPA, 15 CFR Part 990 ("NRDA regulations"), provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning ("notice") if they (1) determine certain conditions have been met,

and if they decide to (2) quantify the injuries to natural resources and (3) develop a restoration plan.

This notice is to announce, pursuant to 15 CFR 990.44, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to evaluate and select restoration actions to compensate the public for the natural resource injuries resulting from the Incident.

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

- a. The rupture of the oil storage tanks on Kirby's barge 30015T on May 10, 2019, resulted in a discharge of oil into and upon navigable waters of the United States, including the Houston Ship Channel and Galveston Bay, as well as adjoining shorelines. Such occurrence constitutes an "Incident" within the meaning of 15 CFR 930.30.
- b. The Incident was not permitted pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*
- c. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident. Chemical components of the reformat discharged from Kirby barge 30015T are known to be harmful to marine and coastal organisms and habitat that were exposed to the oil. Accordingly, the discharged oil has had an adverse effect on the natural resources in Galveston Bay and its adjoining shorelines and impaired the services, which those resources provide.

Documents in the Administrative Record contain more information regarding the specific studies, observations, analyses, etc., by which the Trustees reached

this determination.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under the OPA.

Determination to Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR 990.42(a), that:

- a. Observations and data collected pursuant to 15 CFR 990.43 (including dead fish and invertebrates exposed to reformate; information regarding shoreline beaches, and subtidal habitats and other habitats affected by oil or response activities) demonstrate that injuries to natural resources have resulted from the Incident. Immediately following the Incident, the Trustees, in cooperation with the RP, identified several categories of impacted and potentially impacted resources, including marine mammals, fish, invertebrates, oysters, shoreline and subtidal habitats, and the water column, as well as effects to human use/recreation resulting from impacts on these natural resources. The Trustees then began conducting activities to evaluate injuries and potential injuries within these categories. More information on these resource categories is available in the Administrative Record, including information gathered during the Preassessment Phase.
- b. Spill response actions did not address all injuries resulting from the Incident to the extent that restoration would not be necessary. Although response actions were initiated soon after the spill, the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels (the condition they would have been in had it not been for the Incident), but interim losses have occurred or have likely occurred and will continue until a return to baseline is achieved.

Feasible compensatory restoration actions exist to address injuries resulting from the Incident. To conduct restoration planning, the Trustees have reviewed a number of restoration options in Galveston Bay and its adjoining shoreline that could potentially be implemented to compensate for interim losses resulting from the Incident. In addition, assessment procedures such as Habitat Equivalency Analysis are available to scale the appropriate amount of compensatory restoration required to offset ecological service losses resulting from this Incident. The Trustees will work cooperatively with local governmental agencies and non-governmental organizations to identify a suite of potential restoration projects commensurate with the injuries sustained due to the spill. The public may also send restoration project ideas to the Trustees (FOR FURTHER INFORMATION section for contacts). It is the goal of the Trustees to select restoration with a strong nexus to the spill.

During the Restoration Planning Phase, the Trustees evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and Restoration Plan for public review and comment.

Based upon information in the Administrative Record and the foregoing determinations, the Trustees intend to proceed with the Restoration Planning Phase for this Incident.

Opportunity to Comment

Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident through the solicitation of restoration ideas and public review of the Administrative Record. The Trustees also intend to seek public comment on a draft Damage Assessment and Restoration Plan after it has been prepared.

Administrative Record

The Trustees have opened an Administrative Record in compliance with 15 CFR 990.45. The Administrative Record will include documents considered by the Trustees during the Preassessment, and Restoration Planning Phases of the NRDA performed in connection with the Incident. The Administrative Record will be augmented with additional information over the course of the NRDA process.

The Administrative Record may be viewed at the following website:

<https://www.diver.orr.noaa.gov/web/guest/diver-admin-record/12302>

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